Supreme Court, U.S.
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No.

OCTOBER, 2004 TERM

GABLE & SONS METAL PRODUCTS, INC.,
A Michigan corporation,

Petitioner,

v.

DARUE ENGINEERING & MANUFACTURING,
A Michigan corporation,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. SUBSTANTIAL FEDERAL QUESTION AND ORIGINAL JURISDCITION PREREQUISITES FOR REMOVAL TO FEDERAL DISTRICT COURT

28 U.S.C. §1441(b) allows removal of any state civil action in which the district courts have original jurisdiction wherein the claim is founded on a right arising under the Constitution, treaties or laws of the United States. This Court has routinely held that such removal requires both a substantial federal question and the district court must have original jurisdiction over the action.

The question raised is, when there is a violation by the IRS of 26 U.S.C. §6335(a) by intentionally ignoring the prerequisite provision requiring personal service of notice of seizure before obtaining service by certified mail, whether the defendant in a state quiet title action can remove the action by claiming that the necessary interpretation of 26 U.S.C. §6335(a) as to whether strict compliance or substantial compliance with the statute constitutes a substantial federal question and creates original jurisdiction in the district court.

2. PERSONAL NOTICE PROVISIONS IN 26 U.S.C. §6335(A) REQUIRES: STRICT COMPIANCE AS OPPOSED TO SUBSTANTIAL COMPLAINCE

The courts from virtually the beginning of our country's history have maintained that governmental agents are required to strictly comply with the law when confiscating the property of citizens. A long line of cases have indicated that that IRS agents must strictly comply with the personal service of notice of seizure required by 26 U.S.C. §6335(a). Several Circuit Courts of Appeals have recently chosen to allow violations of said section when the IRS substantially complies with the provision.

The question presented is whether the IRS is required to strictly comply with the personal service provisions of 26 U.S.C. §6335(a), which requires attempted personal service of notice of seizure before the IRS can obtain service through certified mail or, is the IRS allowed to substantially comply with the provisions, especially when the IRS admittedly fails to even attempt to comply with personal service before obtaining service by certified mail.

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DISCLOSUE OF CORPORATE AFFILIATIONS AND FINANCIAL INTERSTS

Pursuant to Sup. Ct. Rule 29.6 Garble & Sons Metal Products, Inc states:

1. It is not a subsidiary or affiliate of a publically owned corporation; and

2. There is no publicly owned corporation that is not a party to this petition that has an interest in the outcome.

The Petitioner respectfully petitions for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The district court's order (per McKeague, D.W.) denying the petitioner's motion to remand (Appendix ("Pet.App.) C at 12) is unpublished. The district court's opinion granting judgment as a matter of law for Darue against Grable's action in quiet title is published at *Grable & Sons Metal Products, Inc. v. Darue Engineering & Mfg.*, 207 F.Supp.2d 694, 697 (W.D. Mich 2002), Pet.App. B. The court of appeal's opinion (per Chief Judge Boggs, joined by Circuit Judge Daughtrey and District Judge Aldrich) affirming is published at *Grable & Sons Metal Products, Inc. v. Darue Engineering and Manufacturing*, 377 F.3d 592 (6th Cir. 2004), Pet.App. A at 1. A motion for rehearing was not made, nor was a stay of mandate sought.

STATEMENT OF JURISDICTION

The court of appeals entered its opinion and order on July 27, 2004. Petitioner invokes this Court's jurisdiction pursuant to 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant portions of 28 U.S.C. §§1331, 1340, 1441(a), 1441(b) and 26 U.S.C. §6335 and 6339 are set forth in the body of the writ as needed.

ISSUE I

SUBSTANTIAL FEDERAL QUESTION AND ORIGINAL JURISDCITION IN DISTRICT COURT ARE PREREQUISITES FOR A STATE CASE TO BE REMOVED TO FEDERAL DISTRICT COURT

A. Statement of the Case.

The Petitioner, Grable & Sons Metal Products, Inc. (Grable), is a corporation organized under the laws of the State of Michigan, who initiated a quiet title action. The quiet title action arose under Michigan law and was filed against Darue Engineering & Manufacturing, Inc. (Darue).

Grable sought to quiet title to certain real estate located at 601-701 W. Plains Road in Eaton Rapids, Michigan. This property was allegedly seized by the IRS in 1994 to satisfy the corporation's tax debt. The Grable complaint, in addition to alleging a cause of action in quiet title, also stated that the IRS had failed to personally serve the corporation notice of seizure as required by 26 U.S.C. §6335(a). All the parties agree that the IRS failed to personally serve the corporation a notice of seizure. The IRS later purported to sell the property through an auction to Darue in 1994. The IRS provided Darue with a quitclaim deed dated November 13, 1995.

On December 14, 2000, the Petitioner filed a quiet title action in the Circuit Court for the County of Eaton in the State of Michigan. On January 16, 2001, Darue removed the quiet title action to the United States District Court in the Western District of Michigan, Southern Division. Grable sought a remand of the action, but the district court denied the request on April 2, 2001. The district court held that, due to the necessity of the interpretation of the requirements of 26 U.S.C. §6335(a), it had jurisdiction pursuant to 28 U.S.C. §1331 over the matter because there was a federal question involved.

Grable appealed to the Sixth Circuit Court of Appeals, which ruled that Grable had asserted a federal right which required the interpretation of a revenue law. Therefore, Grable's claim was a federal question rooted in the Internal Revenue Code.

The court of appeals decision to sanction the denial of a remand warrants this Court's immediate review because the decision sets forth a three part test for a federal question that is not consistent with the holdings of this Court. The decision eliminates the necessity of proving original jurisdiction thereby greatly expanding the limited jurisdiction of the federal district courts in removal situation. The decision also attempts to expand a simple violation of federal law into a substantial federal question, contrary to the holdings of this Court and at least one other United States Court of Appeals. By allowing the Sixth Circuit's decision to stand an open invitation is made for all litigants that they may now remove a state case with a federal question, or with just a violation of federal law, without having to show original jurisdiction in the district court. Such an open invitation will clog an already overburdened federal judicial system and is contrary to the guidance given by this Court's earlier decisions

The decision below conflicts with numerous decisions of this Court and at least one other circuit requiring evidence of original jurisdiction in the federal district court before a removal can stand.

B. Reasons for Granting the Writ.

The Petition for the Writ of Certiorari addresses the issue regarding the prerequisites of both a substantial federal question and original jurisdiction of the district court before removal of a state cause of action to a federal district court. The Writ should be granted for three reasons. *First*, the Sixth Circuit's affirming of a district court's denial of a motion to remand where there has been no showing of a substantial federal question and no showing of the district court's original jurisdiction has so far departed from the accepted and usual course of judicial proceedings and has sanctioned such a departure by a district court as to call for an exercise of this Court's supervisory power.

Second, the Sixth Circuit's decision to uphold a denial of a remand of a state cause of action where there is no substantial federal question or original federal jurisdiction conflicts with previous holdings of this Court.

Third, the decision to allow a removal of a state cause of action without the district court having original jurisdiction over the cause of action is in direct conflict with the 7th Circuit case of *Seinfeld v. Austin*, 39 F.3d 761, 764 (7th Cir. 1994) which requires a federal right of action as a prerequisite before a state case can be removed.

1. **The Sixth Circuit's Affirming of a District Court's Denial of a Motion to Remand Without Requiring the Defendant to Show a Substantial Federal Question and to Show Original Jurisdiction in the District Court Has So Far Departed From the Accepted and Usual Course of Judicial Proceedings and Has Sanctioned Such a Departure by A District Court as to Call for an Exercise of This Court's Supervisory Power.**

Petitioner Grable filed a quiet title action in the State of Michigan alleging that the title to property it claimed was clouded by the claims of Darue. Within Grable's state quiet title action it was alleged that the cloud of title Darue held resulted from the IRS issuing a quitclaim deed based on a purported tax sale in which the IRS violated the personal service requirements as mandated in 26 U.S.C. §6335(a). Darue, using 28 U.S.C. §1441(b) as its source, removed the state quiet title action to the Western District of Michigan alleging that there was a substantial federal question involving the interpretation of the personal service requirements of 26 U.S.C. §6335(a). The district court denied Grable's motion to remand and the Sixth Circuit upheld that denial.

The actions and manner in which the Sixth Circuit arrived at its decision to uphold the denial of the remand have so far departed from the usual course of judicial proceedings and have permitted the Western District Court of Michigan to depart from the normal procedure so as to call for this Court's supervisory power to correct this departure. In essence, instead of addressing the jurisdictional statute that Darue relied upon to remove the state quiet title action and the district court upheld, the Sixth Circuit

mixed and matched several jurisdictional statutes to arrive at an incorrect and unsupported rationale to affirm the district court's denial of Grable's remand motion.

Under normal and accepted judicial process, when a plaintiff files a state cause of action in the state courts, the defendant has the option of removing the cause of action to a federal district court under the removal statutes provided by Congress in 28 U.S.C. §§1441(a) and (b).

28 U.S.C. §1441(a) in pertinent part states,

> "Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending."

Through section 1441(a), Congress has permitted a defendant in a state case to remove any civil action to the district court, if the federal court has original jurisdiction. Apparently, the panel for the Sixth Circuit that upheld the district court's denial of Grable's request for a remand was confused as to the exact statute that Darue relied upon to remove the quiet title action to the district court. While Darue removed the quiet title action from state court to the district court based on 28 U.S.C. §1441(b), the Sixth Circuit panel cited 28 U.S.C. §1441(a), see the Sixth Circuit opinion, Pet.App. A, at 3.

The statute that Darue relied upon and the 6th Circuit should have addressed is 28 U.S.C. §1441(b).

Section 1441(b) in pertinent part states,

> "Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without

regard to the citizenship or residence of the parties."

Through 28 U.S.C. §1441(b), Congress has permitted a defendant in a state case to remove any civil action which is founded on a claim or right arising under the Constitution, treaties or laws of the United States to the district court, if the federal court has original jurisdiction.

Whether 28 U.S.C. §1441(a) or §1441(b) is the proper jurisdictional foundation for removal in this case, certain legal principles remain the same. *First*, because the jurisdictional removal statutes implicate federalism concerns they must be construed narrowly, *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100,108-09, 61 S.Ct. 868, 85 L.Ed 1214 (1941). *Second*, one of the prerequisites of the removal statutes is that a defendant must show that the district court wherein removal is sought has original jurisdiction over the cause of action, *Syngenta Crop Protection v. Henson*, 537 US 28, 123 S.Ct. 366, 154 L.Ed2d 368, 371 (2002). *Third*, when removal is sought, the burden of proof is on the defendant to show that the district court does in fact have original jurisdiction, *Syngenta* supra, 154 L.Ed2d at 372.

The Sixth Circuit departed from the foregoing standard judicial process by broadly interpreting the jurisdictional statutes, by not requiring the federal district court to have original jurisdiction and by not placing the burden on the defendant to show the district court had original jurisdiction.

Rather than directly addressing the question raised on appeal by Grable, the 6th Circuit chose to develop an incorrect alternative rationale to justify its refusal to reverse the district court's decision to keep the removed case. The Sixth Circuit began its Federal Question Jurisdiction discussion, not only with the wrong removal statute 28 U.S.C. §1441(a), but also with an inapplicable jurisdictional statute. The panel initially recognized 28 U.S.C. §1331 as the correct judicial statute. Section 1331 reads: "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws or treaties of the United States." The language of section 1331 is basically the same as removal statute of section 1441(b).

The panel did not discuss or examine the applicability of section 1331 to the present case because, in the Sixth Circuit's view, section 1331 also gave original jurisdiction in addition to the jurisdictional statute it felt was more important. The panel chose to instead rely on 28 U.S.C. §1340 for original jurisdiction by stating, "The District courts have original jurisdiction over an civil action 'arising under any Act of Congress providing for the internal revenue ... .'" In opting to rely on 28 U.S.C. §1340 the Sixth Circuit departed from the widely accepted principle of construing the removal statutes narrowly, see *Shamrock Oil*, supra. In the process of attempting to broaden the scope for removal, the Sixth Circuit created a new and an independent original jurisdiction for the district court through 28 U.S.C. §1340. This new and independent jurisdiction through section 1340 is an issue of first impression before the United States Supreme Court.

Had the 6th Circuit followed the normal, accepted judicial reasoning associated with removal statutes it would have adopted a line of reasoning similar to the one below. By following this line of reasoning, or one parallel to it, the Sixth Circuit would have recognized immediately that section 1340 did not give the district court independent original jurisdiction. The line of reasoning is as follows:

Question, "Does this quiet title civil action arise under any Act of Congress providing for internal revenue?"

If the answer is no, the District Court lacked jurisdiction and the discussion is over.

In this case the action was a quiet title action arising from the laws of Michigan. Thus, the answer should have been no. The 6th Circuit, however, concluded that the answer was yes. Accordingly the next step in the line of reasoning to be followed is:

If the answer is yes, then the question is, "Under what Act of Congress does the action arise?"

This is where the Sixth Circuit falters. Neither Darue nor the Sixth Circuit can state what Act of Congress authorized the

civil action of quiet title. This is because Congress did not pass an act allowing for the private resolution of a quiet title between two private citizens of the same state.

So, even after the 6th Circuit has issued its opinion, the question remains, "What right or immunity was created by what Act of Congress providing for revenue, or for that matter any Act of Congress, constitutes Grable's alleged cause of action founded in quiet title?"

The Supreme Court has never specifically addressed 28 U.S.C. §1340, but several lower courts have. In *Young v. IRS*, 596 F.Supp. 141 (ND Ind. 1984), the district court stated, "The very language of the statute indicates that this section does not create jurisdiction in and of itself. Section 1340 makes it clear that the jurisdiction extends to civil actions arising under the Internal Revenue laws; as such, the suit must be based on some cause of action which the Internal Code recognizes and allows the plaintiff to bring. Absent some recognition of this kind of suit under the Internal Revenue Code, §1340 will not create an independent basis for jurisdiction. As one court has noted, "Given the implication which Article III of the Constitution places on the jurisdiction of the federal courts, it is doubtful that the various jurisdictional statutes [like §1340] could do more than waive the congressionally imposed jurisdictional amount requirement,'" citing *Crown Cork & Seal Co. v. Pennsylvania Human Relations Comm.*, 463 F.Supp. 120, 127 n.8 (ED Pa. 1979).

The *Young* court also stated, "If the plaintiff's claim comes outside the Code, then it logically cannot "arise under' the Code, and therefore §1340 cannot provide plaintiff with jurisdiction."

In this case Grable alleged a quiet title action under the laws of Michigan and outside of the Code. Indeed, there is no provision in the Code which recognized and allowed Grable to file a quiet title suit. Neither Darue nor the 6th Circuit were able to cite such a provision. All the Sixth Circuit panel could do was conclude that Grable's complaint hinged on a Violation of 26 U.S.C. §6335(a) and jump to the conclusion that the alleged violation created an action arising under the laws of the United States. But a mere violation of the law, even if it is the sole issue,

is not enough to create a cause of action, see *Franchise Tax Board v. Construction Laborers Vacation Trust*, 463, U.S. 1, 77 L.ED2d 420, 193 S.Ct. 2841 (1983).

Neither 28 U.S.C. §1441(a), nor 28 U.S.C. §1340 are the applicable jurisdictional statutes in this case because Congress gave no jurisdictional authority for a quiet title action between two citizenship of the same state in federal courts. The only exceptions allowed for the district courts to exercise original jurisdiction in quiet title actions is that allowed by 28 U.S.C. §2409a and §2410. These two sections specifically waive the sovereign immunity of the United States in quiet title actions in which the United States claims an interest (§2409a), or, has or claims a mortgage or other lien (§2410). That neither of these two statutes is applicable in this case is was made perfectly clear in the response of the United States to Darue's third-party complaint in which the United States was named. The United States specifically stated that it neither claimed an interest in the property, nor did it have or claim a mortgage or other lien against the property. Had 28 U.S.C. §1441(a) been the proper statute then the Sixth Circuit would have had no choice but to remand because the federal courts have no original jurisdiction over quiet title actions between private citizens of a state.

Not only did the Sixth Circuit depart from the accepted rule of interpreting removal statutes narrowly, it also departed from the two requirements for removal regarding original jurisdiction in the district courts. The Supreme Court in *Syngenta,* supra clearly defined these requirements. The Sixth Circuit, however, neither required original jurisdiction, nor asked the Darue to shoulder its burden of proving that the district court had original jurisdiction. Thus, in its attempt to broaden the scope of the removal statutes to cover the perceived substantial federal interest in revenue, the Sixth Circuit departed from the principle that removal statutes must be interpreted narrowly. Accordingly, this Court should exercise it supervisory power and reverse the Sixth Circuit's upholding of the denial of a remand where there was no substantial federal question and where the district court had no original jurisdiction.

The bottom line is that the district court, with the Sixth Court's full approval, has made a decision to quiet a state quiet title claim which it had no jurisdiction or authority to do, especially where the United States is not a party that claims or has an interest in the property. Without jurisdiction to quiet title on state property the district court's opinion is void and has no binding affect in any other court. A Writ of Certiorari must be granted to review this type of abuse of jurisdiction.

2. **Certiorari Is Merited Because the Decision Below Conflicts With the Decision of Another United States Court of Appeals and With Decisions of This Court.**

The Sixth Circuit's decision to uphold a removal of a state quiet title action to the federal district court without requiring a substantial federal and original jurisdiction in the federal district court not only went against accepted procedure, but it was also in direct conflict with another United States Court of Appeals in violation of several decisions of the Court. After laying the foundation for its incorrect rationale that jurisdiction of Grable's state quiet title action is founded on 28 U.S.C. §1340, the Sixth Circuit addressed the question of whether the quiet title claim as filed by Grable represented a cause of action 'arising under' the laws of the United States. The resolution of this question determines whether there is a substantial federal question to support a removal under 28 U.S.C. §1441(b). The same resolution will also determine whether there is original jurisdiction under section 1331.

The Sixth Circuit claims, "The long history of Supreme Court guidance concerning the meaning of 'arising under' the laws of the United States has been synthesized into a three part test," see Pet.App. A, at 5. The court set forth its synthesized three part test:

> "..., a federal question may arise out of a state law case or controversy if the plaintiff asserts a federal right that 1) involves a substantial question of federal law; 2) is frame in terms of state law; and 3) requires interpretation of federal law to resolve the issue."

The Sixth Circuit cited three cases allegedly in support of the three part test: *Long v. Bando Manufacturing of America, Inc.*, 201 F.3d 754 (6th Cir. 2000); *Howery v. Allstate Insurance Co.*, 243 F.3d 912, 918 (5th Cir. 2001) and *Seinfeld v. Austin*, 39 F.3d 761 (7th Cir. 1994).

While the *Long* case and the *Howery* case are consistent with each other and with the synthesized three part test as developed by the Sixth Circuit, they are contrary to the full test as developed by the Supreme Court. They are also contrary to the third case cited by the Sixth Circuit, *Seinfeld v. Austen.*

The *Seinfeld* decision does not support just a three part test. Instead, the *Seinfeld* court adds a crucial element that must be present before a federal question can be considered a substantial federal question supporting a removal. The element the Sixth Circuit, the *Long* court and the *Howery* court neglected to apply is the Supreme Court requirement established through *Merrell Dow Parmaceuticals, Inc., v. Thompson*, 478 U.S. 804, 106 S.Ct. 3229, 92 L.Ed2d 650 (1986), that "if a federal law does not provide a private right of action, then a state law action based on its violation perforce does not raise a 'substantial' federal question," *Seinfeld*, supra, 39 F.3d at 764. The *Seinfeld* court specifically adopted, "[a] deferral rule of decision is necessary but not sufficient for federal jurisdiction. There must also be a right of action to enforce to enforce that rule," *Seinfeld*, supra, 39 F.3d at 764.

The three part test the Sixth Circuit synthesized is not the complete test as developed by the Supreme Court because it omits the most crucial element of original jurisdiction in the district court. An analysis of several of this Court's decisions will clearly expose the fatal defect in the synthesized three part test.

This Court in *Franchise Tax Board*, supra, found that a state case could be removed if the complaint shows a cause of action arising under the Constitution or laws of the United States or it appears from the complaint that a substantial, disputed question of law that is essential element of the complaint. This Court also found, however, that merely the interpretation of a federal law, even if it is the only question to be decided, does not

make it a federal question. Contrary to *Franchise Tax Board*, the Sixth Circuit decision sets the stage for any question or interpretation of a federal law to be considered a federal question and as such, sufficient as grounds for removal.

This Court in *Merrell Dow*, supra, 478 U.S. at 813, adopted the principle that a suit arises under the law that creates the cause of action. The holding in *Merrell Dow* was, "We conclude that a complaint alleging a violation of a federal statute as an element of a state cause of action, when Congress has determined that there should be no private, federal cause of action for the violation, does not state a claim 'arising under the Constitution, laws, or treaties of the United States."

The *Long* court, supra 201 F.3d at 759 analyzed the *Merrell Dow* decision and felt that it was unclear. The *Long* court felt that *Merrell Dow* still left an opening for federal jurisdiction based on a substantial federal question of interest, even though there was no express or implied federal cause of action. The court felt that if the substantial federal interest was framed in terms of state law and the interpretation was necessary for the resolution of the state claim then there would still be federal jurisdiction.

This is not the view that the *Seinfeld* court understood. The *Seinfeld* court, in adopting the *Merrell Dow* position stated, "Under *Merrell Dow*, therefore, 'if a federal law does not provide a private right of action, then a state law action based on its violation perforce does not raise a 'substantial' federal question,'" *Seinfeld*, supra, 39 F.3d at 764. Thus, the *Long* incorrectly interpreted *Merrell Dow*. It was the *Long* court's incorrect interpretation of *Merrell Dow* that the Sixth Circuit adopted to arrive at the conclusion that a simple substantial federal interest was enough to translate into a substantial federal question and district court original jurisdiction.

This Court in *City of Chicago v. International College of Surgeons*, 522 U.S. 156, 118 S.Ct. 523, 139 L.Ed2d 525 (1997) affirmed the requirement of original jurisdiction in the district court before a removal was proper. It stated, "The propriety of removal thus depends on whether the case originally could have been filed in federal court." The Court in *City of Chicago* also

required a substantial federal question and explained what it meant, "A federal question exists when a right or immunity created by the Constitution or law of the United States is an element, and an essential one of the plaintiff's cause of action," *City of Chicago*, supra, 139 L.Ed2d at 535.

The question was asked earlier, "What right or immunity was created by what Act of Congress providing for revenue, or for that matter any Act of Congress, constitutes Grable's alleged cause of action founded in quiet title?" According to this Court in *City of Chicago* it is the appropriate question to ask. The answer, however, cannot be found in the Sixth Circuit decision.

Other decisions of this Court serve to elucidate the principles behind the holdings of this Court. A three part test was set forth in *Wider v. Virginia Hospital Assn*, 496 U.S. 498, 110 S.Ct. 2510, 110 L.Ed2d 455 (1980) to determine if a violation of a federal right was present. One of the steps required the assertion of the violation of a federal right for purposes of a 1983 action. The *Wider* court looked to a previous holding when it quoted, "Section 1983 speaks in terms of 'rights, privileges, or immunities,' not violations of federal law, '" citing *Golden State Transit Co. v. Los Angelos*, 493 U.S. 103, 106, 110 S.Ct. 444, 107 L.Ed2d 420 (1989). *Golden State* gave a more complete explanation of a federal right. The Court stated, "In deciding whether a federal right has been violated the court must determine whether Congress intended the provision in question to creates obligations binding on the government or rather 'does no more than express a congressional preference for certain kinds of treatment," *Golden State*, supra, 107 L.Ed2d at 427.

In this case the decision of whether 26 U.S.C. §6335(a) creates a federal right hinges on whether the provision is mandatory on the government or it merely express a preference. If the requirements section 6335(a) merely expresses a preference as to the treatment of personal service in notifications of IRS seizure, then there is no federal right. The Sixth Circuit in its decision to deny Grable his quiet title relief made it clear that the requirements of 26 U.S.C. §6335(a) need only have substantial compliance. The mandatory nature of the personal service provisions was NOT what the Sixth Circuit had in mind when it ruled in favor of

substantial compliance. Accordingly, there was no federal right and the denial of the remand was improper.

If, however, the provisions of 26 U.S.C. § 6335(a) are mandatory as Grable believes they are, it does not necessarily mean that removal was proper. Something more than a federal right is required before removal may be proper. As was discussed above, that essential element that must be present in every removal is original jurisdiction in the federal district court, see *Syngenta*, supra. Without original jurisdiction there can be no removal authority. Neither Darue nor the Sixth Circuit have shown or established that section 6335(a) created any private federal cause of action for quiet title between two private citizens.

Two lower court cases illustrate this point perfectly. In the cases of *Little River Farms, Inc. v. United States*, 328 F.Supp. 476 (ND Ga. 1971) and *Popp v. Eberlein*, 409 F.2d 309 (7th Cir. 1969), both had federal rights but neither had a federal cause of action to enforce that right. Thus, the violations of federal law were unenforceable federal right and therefore, did not create substantial federal questions. In this case there may very well be a federal right, but it remains unenforceable in the federal court until the defendant shoulders its burden of showing that the district court had original jurisdiction for a quiet title action between to citizens.

All of the Supreme Court cases cited above require a substantial federal question, i.e. a right that can be enforced in federal court. In the *Franchise Tax Board* case there was a federal question, but it was not deemed removable because it was not actionable in federal court. In other words, the district court must have original jurisdiction. Even the *Long* case required a substantial federal question.

ISSUE II

PERSONAL NOTICE PROVISIONS IN 26 U.S.C. §6335(A) REQUIRE STRICT COMPIANCE AS OPPOSED TO SUBSTANTIAL COMPLAINCE

A. Statement of the Case.

The Petitioner, Grable & Sons Metal Products, Inc. (Grable), is a corporation organized under the laws of the State of Michigan, who initiated a quiet title action. The quiet title action arose under Michigan law and was filed against Darue Engineering & Manufacturing, Inc. (Darue).

Grable sought to quiet title to certain real estate located at 601-701 W. Plains Road in Eaton Rapids, Michigan. This property was allegedly seized by the IRS in 1994 to satisfy the corporation's tax debt. In the process the IRS, by its own admission, completely failed to comply with the personal notice provisions in 26 U.S.C. §6335(a). Instead, the IRS opted to give notification by certified mail, which is the secondary method of service allowed by section 6335(a) to be exercised only after personal service failed.

The IRS later purported to sell the property through an auction to Darue in 1994. The IRS then provided Darue with a quitclaim deed dated November 13, 1995.

On December 14, 2000, the Petitioner filed a quiet title action in the Circuit Court for the County of Eaton in the State of Michigan. After a denial of Grable's motion to remand the case was heard in a summary manner based briefs by the parties and oral arguments as there was no substantial dispute as to the factual issues in the case. The district court ruled that the IRS' failure to comply with the personal service requirements of 26 U.S.C. §6335(a), but rather obtain service with certification by mail, constituted substantial compliance under 26 U.S.C. §6339(b)(2) and was sufficient to render the quitclaim deed to Darue valid.

Grable appealed to the Sixth Circuit Court of Appeals, which affirmed the district court's ruling the certified mail service

without compliance with the personal service requirements was substantial compliance with 26 U.S.C. §6335(a). Grable now seeks a Writ of Certiorari for the Supreme Court to review this issue.

The decision below conflicts with numerous decisions of other circuits requiring strict compliance with the personal service requirements of 26 U.S.C. §6335(a). The issue of strict compliance verses substantial compliance in relation to 26 U.S.C. §6335(a) is a case of first impression for the Supreme Court.

The court of appeals decision to uphold the district court's sanctioning of the IRS' complete failure to perfect a seizure by complying with certain personal service requirements for notice of an IRS seizure in 26 U.S.C. §6335(a) also flies in the face of this court's strong admonitions not to call the government agents to the task of obeying the law. It also goes against the grain of this Court's refusal to interpret one part of a statute in a manner that renders another part useless or superfluous. Allowing the Sixth Circuit's decision to stand is an open invitation for any government agent who thinks he can make a short cut in the agency's legal procedures as mandated by statute to ignore various portions of the statutes. Such an open invitation will clog an already overburdened federal judicial system to review the actions of government agents, especially IRS agents, who thought that a particular portion of the law was not needed. Such a path is contrary to the guidance given by this Court's earlier decisions.

B. Reasons for Granting the Writ.

The Petition for the Writ of Certiorari also addresses the issue regarding treating the complete failure of the IRS to comply with prerequisite personal service notice of an IRS seizure as substantial compliance because service by certified mail was made. The Writ should be granted for two reasons. *First,* the decision to allow a treat the non-compliance by the IRS of the personal service requirements of 26 U.S.C. §6335(a) as substantial compliance conflicts with numerous holdings in other United States Courts of Appeals.

Second, the Sixth Circuit's affirming of a district court's sanctioning of the IRS' complete failure to comply with the

personal service requirements of 26 U.S.C. §6335(a) as sufficient compliance because service by certified mail was accomplished so far departs from the accepted and usual course of judicial proceedings and has sanctioned such a departure by a district court as to call for an exercise of this Court's supervisory power.

1. Certiorari Is Merited Because the Decision Below Conflicts With the Decision of Another United States Court of Appeals and With Decisions of This Court.

Real estate property of Grable was allegedly seized in 1994 by the IRS. The personal service of the notice of seizure as required by section 6335(a) was intentionally omitted by the IRS in favor of serving Grable by certified mail. The property was purportedly sold at auction to Darue and a quitclaim deed was executed in November of 1995.

In December of 2000, Grable filed a quiet title action to remove the cloud on the title caused by Darue's quitclaim deed from the IRS. Grable maintained the purported tax sale was void *ab initio* and the resulting quitclaim deed was invalid as a conveyance due to the IRS' failure to comply with the personal service requirements of section 6335(a). The district court upheld the IRS' failure and the Sixth Circuit affirmed the holding stating that the IRS did not have to strictly comply with the personal service requirements. As long as Grable had actual notice pertaining to the purported seizure and impending sale, in this case through certified mail, the IRS substantially complied with the provisions of the statute.

In its decision the Sixth Circuit had the opportunity to examine other circuit opinions. There was and is a split among circuits that have considered the issue of requiring the IRS to strictly comply with the personal service of notice provisions of 26 U.S.C. §6335(a) as opposed to allowing the IRS to substantially comply with this the personal service provisions.

On one side of the issue there is only one published circuit decision that supports the application of substantial compliance when there is a failure on the part of the IRS to comply with the personal service of notice required by section 6335(a). That case is

Kabakjian v. United States, 267 F.3d 208, 213 (2001). The Third Circuit in *Kabakjian* held that the notices "were not so defective as to void the seizure of property and its transfer to third parties" because § 6339(b)(2) allowed for substantial compliance. *Ibid.*

On the contra side of the issue there are several circuits that hold the IRS to strict compliance with the personal notice provision of section 6335(a). The leading case is *Reese v. Scoggins*, 506 F.2d 967, 969 (5th Cir. 1975). The Reece court cited the long standing rule that government agents must have accountability. The main rationale behind the *Reece* court's holding was a recognition of the "Damoclean nature" of the IRS' ability to seize property to satisfy legitimate tax deficiencies and of the importance of strict adherence to the statute to protect the taxpayer," *Reece*, supra, 506 F.2d at 971.

Other circuits have come to similar conclusions: *Goodwin v. United States*, 935 F.2d 1061, 1064 (1991) (noting government concession that the literal meaning of the statute requires personal service and requiring strict compliance with § 6335 notice requirements); *Aqua Bar & Lounge, Inc. v. United States Dept. of Treasury*, 539 F.2d 935, 939 (2d Cir. 1976) (same); *Kulawy v. United States*, 917 F.2d 729, 734-35 (2nd Cir. 1990) (same); *Johnson v. Gartland*, 470 F.2d 1104, 1106 (4th Cir. 1973) (non-compliance only allowed because the sale was validated through the ratification of the taxpayer); *Powelson v. United States*, 979 F.2d 141, 143 (9th Cir. 1992) (Language of §6335 requires IRS to be accountable); *Philadelphia & Reading Corp. v. United States*, 944 F.2d 1063, 1072 (3rd Cir. 1991) (Assessment illegal when IRS not in strict compliance with notice requirements); and *Robinson v. United States*, 920 F.2d 1157, 1161 (3rd Cir. 1990).

Even the Sixth Circuit was previously in line with the need for the IRS to strictly comply with the notice requirements of section 6335(a), see *McAndrews v. Belknap*, 141 F.2d 111, 115 (6th Cir. 1944) (Burden of showing literal compliance is on the purchaser); and *Verba v. Ohio Cas. Ins. Co.*, 851 F.2d 811, 816 (6th Cir. 1988). (Attempting twice to notify the taxpayer in person of the public sale of his property, and then sending a certified letter, which was returned, and a regular letter, which was not, is insufficient notice to validate the tax sale).

A Writ of Certiorari is required to resolve this conflict between the circuits for two reasons. *First*, The Supreme Court has never addressed the issue of strict literal compliance as to substantial compliance with regard to the personal service notice requirements of section 6335(a). *Second*, the issue needs to be resolved before more circuit courts allow the IRS to haphazardly comply with its own Code.

2. The Sixth Circuit's Affirming of a District Court's Allowing the Complete Failure of the IRS to Comply With the Personal Service Requirements of 26 U.S.C. §6335(a) in Favor of Service by Certified Mail Has So Far Departed From the Accepted and Usual Course of Judicial Proceedings and Has Sanctioned Such a Departure by A District Court as to Call for an Exercise of This Court's Supervisory Power.

In the immediately preceding discussion its appears that there is far more support for requiring the IRS to strictly comply with the IRC provisions than there is support for allowing the IRS to substantially comply with them. As the following will show, there is solid ground for this.

There are two primary statutes involved in this issue. 26 U.S.C. §6335(a) reads:

> (a) **Notice of Seizure**. – As soon as practicable after seizure of property, notice in writing shall be given by the Secretary to the owner of the property (or, in the case of personal property, the possessor thereof), or shall be left at his usual place of abode or business if he has such within the internal revenue district where the seizure is made. If the owner cannot be readily located, or has no dwelling or place of business within such district, the notice may be mailed to his last known address. Such notice shall specify the sum demanded and shall contain, in the case of

personal property, a description with reasonable certainty of the property seized.

The second is 26 U.S.C. §6339(b) which reads in pertinent part:

> **b) Deed of real property.**--In the case of the sale of real property pursuant to section 6335 --
>
> (1) **Deed as evidence**,--The deed of sale given pursuant to section 6338 shall be prima facie evidence of the facts therein stated; and
>
> **(2) Deed as conveyance of title.**--If the proceedings of the Secretary as set forth have been substantially in accordance with the provisions of law, such deed shall be considered and operate as a conveyance of all the right, title, and interest the party delinquent had in and to the real property thus sold at the time the lien of the United States attached thereto.

The language of both statutes is clear and unambiguous in that both require certain prerequisites to be performed or to exist before the balance of the statute is applicable.

In section 6335(a), the first sentence of the section specifically requires the IRS to personally serve the taxpayer with notice of the IRS seizure, or to leave the notice at the taxpayers abode or place of business, if either are in that internal revenue district. Only after the provisions of the first sentence cannot be complied with, for any number of reasons, is the IRS authorized to service the notice of seizure via certified mail.

In section 6339(b), the first subsection states that the deed provided by the IRS (in this case it was a quitclaim deed) shall be *prima facie* evidence that the IRS complied with all of the requirements and prerequisites for the sale of the property. It should be noted that the deed is only *prima facie* evidence. Iit is not conclusive evidence as the Sixth Circuit seems to believe, see

Pet.App. A at 9. *Prima facie* evidence by definition means that the evidence will hold true unless otherwise shown not to be true.

Subsection (b)(2) gives the deed issued by the IRS the validity to operate as a conveyance of property, if it can be shown that the Secretary (IRS) substantially complied with the provisions of the law in the course of the proceedings to sale the property. Note that subsection (b)(2) is connected with subsection (b)(1) by the conjunction 'and.' This means that both subsections (b)(1) and (b)(2) must be true before a tax deed issued by the IRS for property sold at a tax sale can be deemed valid to convey the property.

If evidence is shown that defeats the *prima facie* nature of the evidence (subsection (b)(1)) or evidence is shown that the IRS did not substantially comply with the law in the sale proceedings (subsection (b)(2)) then the deed cannot be deemed to be a valid conveyance of property.

When Grable filed its quiet title action in state court it alleged that the IRS did not comply with the personal service provisions of section 6335(a). By its own admission, and all parties are in agreement, the IRS did not even attempt to comply with the first sentence of section 6335(a) which requires personal service of the notice of seizure, or notice left at the taxpayer's abode or place of business, before service can be made through certified mail. This admission destroys the *prima facie* nature of the deed.

Furthermore, this is not a case of the IRS attempting to serve a taxpayer and not being able to do so. It is a case of the IRS choosing to ignore the personal service requirements of section 6335(a). Therefore, it is not a technical mistake, but an intentional one. As a result of the IRS' intentional disobedience to the law, it cannot therefore be considered substantial compliance.

In any event, the district court, with the Sixth Circuit affirming it, has chosen to apply the substantial compliance provisions of section 6339(b)(2) to indorse the IRS' complete and intentional failure to comply with prerequisite provisions of section 6335(a). Such a decision goes against this Court's time honored pledge to hold the governmental agents accountable to the law.

The circuit courts that require strict compliance, as listed above have determined that substantial compliance is not acceptable in the context of a tax seizure. This view follows that of Chief Justice Marshall that the "person invested with such a power [to convey land] must pursue with precision the course prescribed by the law, or his act is invalid ... ." *Thatcher v. Powell*, 19 U.S. (6 Wheat.) 119, 125 (1821).

The courts that have chosen to depart from this time honored requirement have followed a treacherous and devious path that does two things. *First*, they have chosen to interpret a portion one statute taken out-of-context, 26 U.S.C. §6339(b)(2), and apply it in such a manner as to render another portion of statute, the first sentence of section 6335(a), superfluous, ineffective and unnecessary. This Court is extremely reluctant to allow such an interpretation, see *Franchise Tax Board,* supra, 77 L.Ed2d at 436. see also *Freytag v. Commissioner of Internal Revenue,* 501 U.S. 868, 111 S.Ct. 2631, 115 L.Ed2d 764 (1991) wherein the Court reaffirmed that "courts 'are not at liberty to create an exception where Congress has declined to do so.'"

What is especially troublesome about this case is that the Sixth Circuit recognized the correct rule, see Pet.App. A at 8. Yet, even though the court acknowledged what the correct application of law was, it was not persuaded that it should follow it. This type of deliberate deviation from accepted legal principles is one of the primary reasons why a Writ of Certiorari must be granted.

In this case Congress has determined that the IRS shall first personally serve, or attempt to personally serve, notice of an IRS seizure of the taxpayer. If such an attempt fails, then the IRS is allowed to attempt service by way of certified mail. The facts in this case indicate that the IRS did not even attempt to comply with the personal service of notice provisions. The decision of the Sixth Circuit allows such total defiance of the law and thereby makes an exception to serving the taxpayer personally where Congress made it a requirement in direct violation of the *Freytag* principle.

Second, the circuit courts adopting the substantial compliance alternative, including the Sixth Circuit, have chosen to support violation of the law through equity. In this case, it is not

just a technical violation of the law, but a complete and intentional violation. This Court has continually forbidden courts from resorting to equity to justify a violation of the law. This Court in *Reno v. Bossier Parish School Bd*, 520 U.S. 471, 117 S.Ct. 1491, 137 L.Ed2d 730, 746-747 (1997) stated, "Courts of equity can no more disregard statutory and constitutional requirements and provisions than can the courts of law." As the Court in *Freytag*, supra, warned, *Reno* also strongly cautions, lower courts cannot and should not search for reasons for what Congress has plainly done. In this case Congress has plainly and clearly required the IRS to attempt personal service of a notice of seizure before making service via certified mail. The Sixth Circuit would allow the requirement of Congress to be ignored by the IRS.

The procedure that the Sixth Circuit used to deviate from the long standing tradition of strict compliance is also in direct conflict with the admonition in *Great-West Life & Annuity Insurance Co. v. Knudson,* 534 U.S. 204, 122 S.Ct. –, 151 L.Ed2d 635, 647-649 (2002). There this Court frowned on the practice and procedure of some courts that look to the basic purpose of the statute when the language of the provision is clear and unambiguous. This Court in *Great-West Life*, supra, 151 L.Ed2d at 649, made it clear, "vague notions of a statute's 'basic purpose' are nonetheless inadequate to overcome the words of its text regarding the specific issue under consideration."

Finally, this Court has indicated that the court is not in the position to make changes in the law. Congress is in the position to make such changes. Accordingly, though equity is flexible, it must be confined within certain limits. One particular limit is that equity should never be used to sanction the violation of a law or provision of law. See *Grupo-Miexicano de Desarrollo, v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 119 S.Ct. 1961, 144 L.Ed 2d 319, 333, (1999).

The Sixth Circuit by permitting the district court to sanction a violation of the law has departed far from the accepted standard that this Court requires in adjudicating issues of the law. Accordingly, a Writ of Certiorari must be granted so that this Court can exercise its supervisory powers to bring the Sixth Circuit in line with the traditional and accepted interpretation of the law.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted

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APPENDIX

APPENDIX A – OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT DECIDED AND FILED: July 27, 2004

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 02-1678

GABLE & SONS METAL PRODUCTS, INC.,

Plaintiff-Appellant.

v.

DARUE ENGINEERING & MANUFACTURING,

Defendant-Appellee.

Appeal from the United States District Court
For the Western District of Michigan at Grand Rapid.
No. 01-00037 – David W. McKeague, District Judge*.

Argued: March 9, 2004

Decided and Filed: July 27, 2004

Before: BOGGS, Chief Judge; DAUGHTREY, Circuit Judge; and ALDRICH, District Judge.

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* The Honerable Ann Aldrich, United States District Judge for the Northern District of Ohio, sitting by designation.

ARGUED: Charles E. McFarland, Campbellsburg, Kentucky, for Appellant., Michael C. Walton, RHOADES, McKEE, BOER, GOODRICH & TITTA, GRAND Rapids, Michigan, for Appellee, ON BRIEF: Charles E. McFarland, Campbellsburg, Kentucky, for Appellant., Michael C. Walton, RHOADES, McKEE, BOER, GOODRICH & TITTA, GRAND Rapids, Michigan, for Appellee,

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OPINION

BOGGS, Chief Judge. Grable & Sons Metal ProductsInc., ("Grable") argues that the district court committed two errors in granting judgment to Darue Engineering & Manufacturing ("Darue") in Grable's action to quiet title against Darue. First, Grable argues that its claim, although based on federal tax law, does not present a federal question, and, therefore, that the district court did not have subject jurisdiction to adjudicate the case after Darue remove it from Michigan state court. Secondly, Grable appeals the district court's judgment denying its quiet-title claim in property Darue had purchased at a tax sale after the IRS seized it from Grable in 1994.

Granble's quiet-title action is based on provisions of the Internal Revenue Code concerning proper procedures for notifying delinquent taxpayers that their property has been seized. Its claim implicates a substantial federal interest, thereby presenting a federal question. Furthermore, the district court correctly denied Grable's action because the Internal Revenue Code allows for substantial, rather than literal, compliance with regulations regarding tax-seizure notification. Neither federal law nor principles of equity supports Grable's claim, asserted six years after the sale of its property, that notice by certified mail, rather than in person, rendered the IRS sale to Darue invalid. Accordingly, we affirm the judgment of the district court in its entirety.

I

The facts in this case are not disputed. In 1994, the IRS seized property at 601-7-1 W. Plains Road, in Eaton Rapids, Michigan, to satisfy Grable's tax debt resulting from not paying its corporate income taxes for six years. The IRS served notice of the seizure by certified mail, although 26 U.S.C. § 6335(a), the relevant statute, provides that notice must be "given" personally to the owner of the property. The parties agree that the IRS failed to adhere to the exact provisions of the statute but that Grable nevertheless received actual notice of the seizure. The IRS sold the property to Darue on December 13, 1994, for $44,500. The record before us contains no clear evidence that Grable challenged the sale at the time or attempted to redeem the property at issue in this case. Following its standard procedure, the IRS executed a quitclaim deed to Darue on November 13, 1995.

On December 14, 2000, about six years after Darue bought the property, Grable challenged the sale in Eaton county circuit Court by filing a quiet-title action. Darue removed the case to the United States court for the Western District of Michigan under 28 U.S.C. § 1441(b). Grable filed a motion to remand based on lack of subject matter jurisdiction, 28 U.S.C. § 1447(c). The district court held that it had jurisdiction to hear the case because the application of § 6335(a) implicates a substantial federal interest, meaning that Grable's claim was based on a federal question. On March 29, 2002, the district court denied Grable's motion to quiet title and awarded judgment to Darue. Grable appealed to this court in a timely manner.

II

Federal Question Jurisdiction

A defendant may remove to federal district court "any civil action brought in a state court of which the district courts of the United States have original jurisdiction." 28 U.S.C. § 1441(a). District courts have original jurisdiction over any civil action "arising under any Act of Congress providing for internal revenue...." 28 U.S.C. § 1340. This court reviews district court decisions regarding subject matter jurisdiction *de novo*. *Caudill v.*

N. Am. Media Corp., 200 F.3d 914, 916 (6th Cir. 2000). Because we may not rule on the merits of a case over which a district court did not have subject matter jurisdiction, we must decide that issue first. *See Thomas v. United States*, 166 F.3d 825, 828 (6th Cir. 1999). The parties do not have diversity of citizenship, 28 U.S.C. § 1332(a), nor is the United States a party to this action.[1]

Federal courts also have original jurisdiction over claims "arising under the Constitution, laws, or treaties of the United states." 28 U.S.C. § 1331. Whether a claim presents a federal question "must be determined from what necessarily appears in the plaintiff's statement of his own claim." *Taylor v. Anderson*, 234 U.S. 74, 75-76 (1914). In its original complaint to quiet title, Grable alleged that Darue's quitclaim deed was invalid because it "was given with improper notice pursuant to 26 U.S.C. § 6331 *et seq* .... [and] since the tax deed was given pursuant to improper notice as required by 26 U.S.C. § 6335(a), said transfer and claim through the tax deed is null and void *ab initio*." The key question is whether Grable's quiet-title action, based as it is on the faulty process in a tax seizure, "arises under" federal law and thus invokes federal court jurisdiction. We hold that it does.

The statute upon which Grable bases his complaint reads:

> As soon as practicable after seizure of property, notice in writing shall be given by the secretary to the owner of the property ... or *shall be left at his usual place of abode or business* if he has such within the internal revenue district where the seizure is made. If the owner cannot be readily located, or has no dwelling place or place of business within such district, the notice may be mailed to his last known address.

26 U.S.C. § 6335(a) (emphasis added). The parties agree that the IRS failed to "give" or "leave" notification and that therefore the service of notice did not comply with the statute. *See Goodwin v.*

[1] In order to be a party to a quiet title action, the United States must have an interest in the property, which it no longer has in this case. 28 U.S.C. § 2410(a).

United States, 935 F.2d 1061, 1064 (1991) (noting government concession that the literal meaning of the statute requires personal service); *Howard v. Adle*, 538 F.Supp. 504, 507 (E.D. Mich. 1982) (demonstrating that the certified mailing is insufficient for compliance with the statute by quoting 26 C.F.R. § 301.6335-1(b)(1)(1981) and IRS Manual § 5356.1(2)(1980); the latter specifies that the "original notice of sale will be delivered to the taxpayer personally"). Although Grable's complaint hinges on a violation of the Internal Revenue code, Grable insists that its cause of action does not arise under federal law.

The long history of Supreme Court guidance concerning the meaning of "arising under" the laws of the United States has been synthesized into a three part test. Although formulations differ slightly among the circuits, a federal question may arise out of a state law case or controversy if the plaintiff asserts a federal right that 1) involves a substantial question of federal law; 2) is framed in terms of state law; 3) requires interpretation of federal law to resolve the case. *Long v. Bando Mfg. of America*, 201 F.3d 754, 759 (6th Cir. 2000); *see e.g., Howery v. Allstate Insurance Co.*, 243 F.3d 912, 918 (5th Cir.), *cert. denied*, 534 U.S. 993 (2001); *Seinfeld v. Austin*, 39 F.3d 761, 763 (7th Cir, 1994), *cert. denied sub nom. Abbot Labs v. Seinfeld*, 514 U.S. 1126 (1995). The asserted federal right in this case, personal notification of seizure of property as provided by IRS regulations, fulfills these three requirements.

Substantial Federal Interest

To identify a federal question, we must make "a pragmatic assessment of the nature of the federal interest at stake," *Howery* 243 F.3d at 917 (citing commentators), a simple task in this context. The federal government cannot function without effective tax collection. *See United States v. Kimbell Foods*, 440 U.S. 715, 734 (1979) (citing *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 425, 428, 431 (1819)). Society has a strong interest in clear rules for handling delinquent taxpayers. The IRS must have transparent procedures for seizing and selling property so that people will be willing to purchase property at tax sales, allowing the IRS to provide a predictable stream of tax revenue. Determining the scope of the IRS's authority to seize property to

satisfy a tax debt undoubtably implicates a substantial federal interest.

Presentation as a sate law claim

Grable sued to quiet title, which is generally a state law cause of action. However, the scope of a taxpayer's right to due process in the form of notice of the tax seizure and sale is the essential element of this claim. Grable would not have any cause of action, and Darue would have undisputed title to the property, were it not for the technical notice requirements of § 6335(a). Therefore the Internal Revenue Code, not state property law, lies at the center of this dispute. The state and federal claims are sufficiently entwined to allow us to find that Grable has presented a federal question.

Interpretation of the federal law required

Disposition of all the aspects of this case, including those related to the traditional state law property issues, turn on construction of federal tax law. Both parties agree that the only way to resolve the underlying controversy is to evaluate whether § 6335(a), which mandates notice for IRS seizure of property for non-payment of taxes in person, requires strict, or merely substantial, compliance with its provisions to allow the IRS deed to convey title. If strict compliance is necessary, then Grable is entitled to get his property back because the IRS did not comply with the letter of the law. If substantial compliance is sufficient, then further analysis and weighing of the equities of the situation is required. Therefore the final requirement is met: interpretation of the federal tax code is necessary to resolve the state law issue.

In sum, Grable's quiet title action presents a federal question because it is rooted in the Internal Revenue Code, the correct interpretation of which represents a substantial federal interest.

III

Action to Quiet Title

The district court also correctly granted summary judgment to the appellee, Darue. At issue is whether serving notice through a certified letter, which Grable in fact received, constitutes sufficient compliance with the statute to make the resulting quitclaim deed valid. Evaluating whether substantial compliance is applicable is a question of law that is reviewed *de novo*. *In re Eagle-Picher Indus., Inc.* 285 F.3d 522, 527 (6th Cir. 2002) (applying substantial compliance analysis to notice requirements in a bankruptcy case). However, the rule itself is an equitable doctrine, so that a district court's decision to apply it is reviewed for abuse of discretion. *Id.* At 529. *See Cleveland Guild Local 1 v. Plain Dealer Pub. Co.*, 839 F.2d 1147, 1155 (6th Cir. 1988).

The Internal Revenue Code states that:

> **b) Deed of real property.**--In the case of the sale of real property *pursuant to section 6335* --
>
> . . .
>
> **(2) Deed as conveyance of title.**--If the proceedings of the Secretary as set forth have been *substantially in accordance with the provisions of law*, such deed shall be considered and operate as a conveyance of all the right, title, and interest the party delinquent had in and to the real property thus sold at the time the lien of the United States attached thereto.

26 U.S.C. § 6339(b)(2) (emphasis added). Therefore, if the IRS substantially complied with the provisions of § 6335(a), then the tax sale is valid.

Grable counsels against reading the substantial compliance provision of § 6339(b)(2) as applying to § 6335(a) seizures, in spite of the statutory language to the contrary, since doing so

would render the notice provisions "totally ineffective." Appellant Br. At 31. This argument is not persuasive. Grable is correct that a basic rule of statutory construction mandates that a court should read statutes as a whole and not interpret one provision in a way that would render another meaningless or superfluous. *Beck v. Pripis*, 529 U.S. 494, 506 (2000) (calling the rule a "longstanding canon of statutory construction'); *Lake Cumberland Trust v. EPA*, 954 F.2d 1218, 1222 (6th Cir. 1992).

Allowing substantial compliance does not undermine the purpose of § 6335(a), nor make its provisions superfluous. Should the IRS fail to adhere to the strict statutory notice provisions, it then has the burden of showing it substantially complied with them. Proving that a recalcitrant taxpayer actually received notice of a seizure or sale could be quite difficult. No court would uphold a seizure without notice. *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950) (stating that "there can be no doubt that a minimum [the due process clause] require[s] that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case").

Ignoring the provisions of § 6335(a), puts the IRS at risk that a court will find its alternative notification procedures inadequate and invalidate the tax sale. Gauging how much variation will be tolerated puts the IRS in very uncertain territory. For instance, a simple public announcement of a tax sale, as provided for in 26 U.S.C. § 6335(b), is "constitutionally inadequate." *Verba v. Ohio Cas. Ins. Co.*, 851 F.2d 811, 816 (6th Cir. 1988). Attempting twice to notify the taxpayer in person of the public sale of his property, and then sending a certified letter, which was returned, and a regular letter, which was not, is insufficient notice to validate the tax sale. *Reese v. Scroggins*, 506 F.2d 967, 969 (5th Cir. 1975). Nor will a court be swayed by the facts that the taxpayer received notice of the initial property seizure and found out about the auction before the bidding began. *Ibid.* Adjudication of substantial compliance cases is very fact-specific, and the outcome is uncertain for the litigants. We do not believe that the latitude allowed by § 6335(b)(2) undermines the strong motivation for the IRS to follow the letter of § 6335(a). Only by doing so can it ensure the validity of its tax sales, effectively collect back taxes, and avoid litigation.

The Third Circuit approved the application of the substantial compliance doctrine to § 6335(a) in *Kabakjian v. United States*, 267 F.3d 208, 213 (2001), a case that is directly on point, and upon which the district court relied. Like Grable, Kabakjian owed the IRS taxes, and his property was seized and sold at auction. He sued the government, claiming that the notices he received pursuant to § 6335(a) were defective because he received them by certified mail, rather than personal delivery. The Third Circuit held that the notices "were not so defective as to void the seizure of property and its transfer to third parties" because § 6339(b)(2) allowed for substantial compliance. *Ibid.* Because Kabakjian could not demonstrate any prejudice beyond a theoretical deprivation of his right to notice, the court ruled that all his property rights had transferred to a third party, and his claim failed on the merits. *Ibid.*

Protecting the interests of bona fide purchasers is an important aspect of quiet title analysis. In the one opportunity the Sixth Circuit has had to address the question of substantial compliance in the context of a tax seizure and sale, we too held that procedural irregularities could not void a tax sale. *PM Group Inv. Corp. v. PYK Enter.*, No. 97-1335, 1998 WL 242337, at **3 (6th Cir. May, 1998) (unpublished opinion) (holding that issuance of a certificate of sale was conclusive evidence of the regularity of the sale). We noted that § 6339(b)(2) was enacted to protect bona fide purchasers, such a Darue in this case. *Ibid.* (citing *United States v. Whitting Pools*, 426 U.S. 198, 211 (1983)).

Grable argues that "provisions of law" in § 6339(b)(2) means provisions of state law, citing *Fuentes v. United States*, 14 Cl.Ct. 157, 167 (1987), and, therefore, that strict adherence to the statute is required. *Fuentes* dealt with a homeowner's suit against the IRS for delivering a quitclaim deed that was invalid under Puerto Rican law. The Court of Claims noted "that a sharp focus must be placed on the distinction between the law applicable to the efficacy of a tax sale and the law applicable to the execution of a deed stemming therefrom. As to the former, local law governs." *Id.* At 166. This case deals with the efficacy of the tax sale, rather

than the validity of the deed,[2] and thus a question of federal law. *See also Reece*, 506 F.2d at 970 (holding that faulty notice provisions made the *sale* voidable *ab initio*) (emphsis added). We also adopt the district court's analysis rejecting Grable's reading of *Fuentes*. The district court correctly pointed out that the substantial compliance language of § 6339(b)(2) does not refer to the execution of the deed, but rather to the *proceedings* by which the Secretary sells real property pursuant to § 6335, and therefore the statute directly contradicts Grable's theory that that the substantial compliance provisions only applies to state law. *Grable & Sons Metal Products, Inc. v. Darue Engineering & Mfg.*, 207 F.Supp. 2d 694, 697 (W.D. Mich 2002) (emphasis in the original).

Some courts have determined that substantial compliance is not acceptable in the context of a tax seizure. This view follows that of Chief Justice Marshall that the "person invested with such a power [to convey land] must pursue with precision the course prescribed by the law, or his act is invalid . . . ." *Thatcher v. Powell*, 19 U.S. (6 Wheat.) 119, 125 (1821). In *Reece v. Scroggins*, the leading case advocating strict construction, the court voided a tax sale because the IRS "handled this sale of land in a somewhat casual fashion," including failure to comply with notice requirements and irregularities in the subsequent public action. *Reece*, 506 F.2d at 970. The main rationale behind the court's holding was a recognition of the "Damoclean nature" of the IRS's ability to seize property to satisfy legitimate tax deficiencies and of the importance of strict adherence to the statute to protect the taxpayer. *Id. At 971;* Aqua Bar & Lounge, Inc. v. United States Dept. of Treasury, 539 F.2d 935, 939 (2d Cir. 1976) (same).

In this case, however, Grable was amply protected. It received actual notice of tax sale, which was one of several resulting from a six-year hiatus from paying taxes. It has not alleged any actual prejudice as a result of receiving notice through certified mail, nor did it take any action against Darue for six years. The protections in the statute are designed to prevent the

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[2] *See* Robert Kratovil, *Real Estate Law* 49 (6th ed. 1974) (explaining that a "quitclaim deed purports to convey only the grantor's *present interest in the land*, if any, rather than the land itself . . . . If he has no interest, none will be conveyed.") (Emphasis in original.)

government from seizing property without warning. The district court did not err in refusing to extend these protections to a delinquent taxpayer who knew that its property was being seized but waited years to assert its rights.

Although the statute allows for substantial compliance, the district court also analyzed the case under equitable principles, coming to the same conclusion for Darue. Because we may affirm the district court on any ground supported by the record, we do not have to review the district court's application of equity, *Shaw v. Deaconess Hosp.*, 355 F.3d 496, 498 (6th Cir. 2004), but we make two short points. In a case with similar defects in notice, the United States District Court for the eastern District of Michigan applied equity in holding that substantial compliance was sufficient to validate the sale. *Howard*, 538 F.Supp. at 508 (applying Michigan law to resolve the quiet title action). Secondly, the district court's decision to apply equity to dismiss Grable's quiet title action does not contradict an earlier Michigan Court of Appeals quiet-title action that was decided in Grable's favor. *Village of Dimondale v. Grable*, 618 N.W.2d 23 (Mich.App. 2000). In defending an action to quiet title to another piece of property that Mr. Grable owned personally, he argued that the tax sale was not valid because of defective IRS notice. The state appeals court held that, as a defendant, he did not have to worry about sleeping on his rights but was entitled to assert any valid defense. *Dimondale*, 618 N.W.2d at 31-32. The court also noted that 'equity is a shield, not a sword." *Id.* at 32. The district court properly relied on that maxim when it held that a delay of approximately six years in pressing a claim provided sufficient basis to deny Grable relief.

IV

For the reasons set out above, we **AFFIRM** the decision of the district court to deny Grable summary judgment and to award judgment to Darue.

APPENDIX B – ORDER OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION DATED AND FILED: APRIL 2, 2001

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 1:01-CV-37

GABLE & SONS METAL PRODUCTS, INC.,
A Michigan corporation,

Plaintiff,

v.

DARUE ENGINEERING & MANUFACTURING,
A Michigan corporation,

Defendant.

Before Hon. David W. McKeague.

ORDER DENYING MOTION TO REMAND

Plaintiff Grable & Sons Metal Products, Inc., having moved the Court to remand this action to Eaton County Circuit Court, from which it was removed by defendant Darue Engineering & Manufacturing, Inc.; and

The Court having duly considered the motion as well as defendant's response in opposition, and having heard oral arguments on April 2, 2001; and

The Court finding, for the reasons more fully set forth on the record on April 2, 2001, that the plaintiff's complaint does present a question arising under the laws of the United States and

that the Court does, therefore, have subject matter jurisdiction; now therefore,

IT IS HEREBY ORDERED that plaintiff's motion to remand for lack of jurisdiction is **DENIED**.

Dated April 2, 2001

s/ David W. McKeague
Hon. David W. McKeague
United States District Judge

APPENDIX C – OPINION AND JUDGMENT ORDER OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION
DATED: MARCH 28, 2002
FILED: MARCH 29, 2001

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 1:01-CV-37

GABLE & SONS METAL PRODUCTS, INC.,
A Michigan corporation,

Plaintiff,

v.

DARUE ENGINEERING & MANUFACTURING,
A Michigan corporation,

Defendant.

Before Hon. David W. McKeague.

OPINION OF THE COURT

This is a quiet title action. Plaintiff Grable & Sons Metal Products, Inc. ("Grable"), commenced the action in Eaton County Circuit Court, asking the court to remove a cloud on its title to certain real property in Eaton Rapids, Michigan. The cloud was created by a quitclaim deed purporting to convey all plaintiff's interest in the subject property from the District Director of Internal Revenue to defendant Darue Engineering & Manufacturing, Inc. ("Darue"), pursuant to a tax sale. Plaintiff alleges the quitclaim deed is void because plaintiff never received proper notice of the Internal Revenue Service seizure of the property in the first place.

Defendant Darue removed the action to this Court, properly contending that adjudication of plaintiff's claim necessarily turns on a proposition of federal law, i.e. the IRS's compliance with the notice requirements of 26 U.S.C. § 6335(a). Subsequently, defendant Darue filed a third-party complaint alleging the United States is liable for Darue's damages if Darue's quitclaim deed is declared void.

The relevant facts are not disputed. Thus, the parties have submitted plaintiff's quiet title claim for judgment as a matter of law based on briefs and oral arguments of counsel. Also before the Court is the United States' motion to dismiss the third-party complaint for lack of subject matter jurisdiction, in that sovereign immunity has not been waived. For the reasons that follow, the Court will award judgment to Darue on plaintiff's quiet title claim, thereby obviating the need for further proceedings on the third-party complaint.

I

It is undisputed that in 1994, the IRS seized the subject Eaton Rapids property, commonly known as 601-701 W. Plains Road, then owned by plaintiff Grable, due to plaintiff's failure to pay corporate income taxes for some six years. It is also undisputed that 26 U.S.C. §6335(a) requires, under the instant circumstances, that notice of the seizure be "given" personally to the owner of the property.[1] Plaintiff

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[1] Section 6335 (a) provides:

(a) **Notice of Seizure**. – As soon as practicable after seizure of property, notice in writing shall be given by the Secretary to the owner of the property (or, in the case of personal property, the possessor thereof), or shall be left at his usual place of abode or business if he has such within the internal revenue district where the seizure is made. If the owner cannot be readily located, or has no dwelling or place of business within such district, the notice may be mailed to his last known address. Such notice shall specify the sum demanded and shall contain, in the case of

was served of the notice by certified mail. The United States conceded that the conditions prerequisite to authorized service by mail were not met.

Yet, despite undisputedly receiving actual notice of the seizure and subsequent sale of the property on December 13, 1994, and despite its knowledge that the validity of the notice received was questionable, plaintiff took no action to prevent the sale or to redeem the property following the sale to Darue. Darue purchased the property on December 13, 1994 for $44,500. The quitclaim deed was executed on November 13, 1995. Not until December 14, 2000 did plaintiff commence this action challenging the validity of the conveyance.

II

Plaintiff contends that because the procedure attending the IRS seizure of its property was undeniably flawed, the conveyance from the IRS to Darue is void and the quitclaim deed is ineffective to transfer valid title. Plaintiff's claim finds support in the case law. In *Village of Dimondale v. Grable*, 240 N.W.2d 553 (2000), the Michigan Court of Appeals addressed a nearly identical issue concerning other property of Grable & Sons Metal Products, Inc. The court concluded that notice of seizure by certified mail was not in strict compliance with the requirements of 26 U.S.C. § 6335(a). *Id.* at 567-69. Absent strict compliance, the IRS was held not to have perfected its right to sell clear title. *Id.* Consequently, the ensuing tax sale of the land was deemed void and the tax deed was held to be invalid. *See also Goodwin v. United States*, 935 F.2d 1061, 1065 (9th Cir. 1991) (requiring strict compliance with § 6335 notice requirements); *Kulawy v. United States*, 917 F.2d 729, 734-35 (2nd Cir. 1990) (same); *Reece v. Scoggins*, 506 F.2d 967, 970-71 (5th Cir. 1975) (same); *Aqua Bar Lounge, Inc.*, 438 F.Supp. 655, 558 (E.D. Pa. 1977) (same).

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personal property, a description with reasonable certainty of the property seized.

However, there is also case law support for the proposition that substantial compliance with the § 6335(a) notice requirements is sufficient to validate the subsequent tax sale. The § 6335 notice requirements are designed to protect the taxpayer by giving him an opportunity to be present at the tax sale and bid on the property. *Reece*, 506 F.2d at 971. In *Kabakjian v. United States*, 267 F.3d 208 (3rd Cir. 2001), the court held the § 6335 notice requirements must be viewed in light of 26 U.S.C. § 6339(b)(2):

> Under 26 U.S.C. § 6339(b)(2), where a deed to real property conveys property seized under § 6335, such a deed operate as a conveyance of all the delinquent taxpayer's right, title and interest in the property so long as the proceedings "have been substantially in accordance with the provisions of law."

Id. at 213. Thus, notwithstanding a failure to strictly comply with § 6335 – in that the delinquent taxpayers received actual notice of seizure and sale by certified mail, rather than personal delivery – the validity of the ensuing sale was upheld. In the absence of any showing of prejudice, the court held that the Kabakjian's undisputed actual notice of the seizure and sale demonstrated substantial compliance with § 6335, sufficient to transfer title. *See also Kaggen v. Internal Revenue Service*, 71 F.3d 1018, 1021 (2nd Cir. 1995) (holding substantial compliance with § 6335(a) to be sufficient).

Plaintiff insists that *Kabakjian* Is wrongly decided, based on "faulty statutory construction." Plaintiff contends that § 6339(b)(2) does not mean what it says it seems to plainly say. Section 6339(b)(2) provides:

> **b) Deed of real property.**--In the case of the sale of real property *pursuant to section 6335* --
>
> . . .
>
> **(2) Deed as conveyance of title.**--If the proceedings of the Secretary as set forth have been

> *substantially in accordance with the provisions of law*, such deed shall be considered and operate as a conveyance of all the right, title, and interest the party delinquent had in and to the real property thus sold at the time the lien of the United States attached thereto.

"Subsequently in accordance with the provisions of law" refers exclusively, plaintiff contends, to the provisions of state law that govern the execution of the deed resulting from the tax sale.

Plaintiff has cited case law recognizing that state law governs the execution of the deed and federal law governs the tax sale procedure. *See Martin v. United States*, 37 Fed.Cl. 86, 90 (1996); *Fuentes v. United States*, 14 Cl.Ct. 157, 166-67 (1988). Yet, these cases do not suggest that the substantial compliance language of § 6339(b)(2) applies *only* to the requirements of state law, and plaintiff has cited no published opinion that expressly so holds.[2] In fact the substantial compliance language of § 6339(b)(2), referring not to the execution of the deed, but to "the *proceedings* of the Secretary" in connection with the sale of real property pursuant to § 6335, directly contradicts plaintiff's preferred construction.

Accordingly, the Court remains unpersuaded that *Kabakhian* is wrongly decided. Consistent with *Kabakjian*, the Court concludes that § 6339(b)(2) means what it says. Assuming all other pertinent requirements of state and federal law are met, substantial compliance with the notice requirements of § 6335(a) is sufficient to support valid transfer of title through the tax deed. Inasmuch as plaintiff undisputedly received actual notice of the seizure of its Eaton Rapids property by certified mail; was afforded ample opportunity to be present at the tax sale and bid on the property; and has not even argued that it suffered any prejudice as a result of the IRS's failure to personally deliver notice, the Court is satisfied that § 6335(a) was substantially complied with. It

[2] The cases cited by plaintiff in support of strict compliance of the § 6335 notice requirements, supra, at p. 4, do not even mention § 6339(b)(2).

follows, pursuant to § 6339(b)(2), that the tax deed conveying plaintiff's right, title and interest in the property to Darue is valid and effective as against plaintiff's present challenge.

III

This result is consistent with other decisions that have resorted to equitable principles, rather than § 6339(b)(2), to avoid unjust results that would otherwise proceed from strict enforcement of the § 6335 notice requirements. In *Howard v. Adle*, 538 F.Supp. 504, 508 (E.D. Mich. 1982), the court recognized that a quiet ttile action is an equitable action. The court further recognized that under Michigan law, a party aggrieved by a defective tax sale must act promptly and equitably to avoid the sale. *Id.* That the § 6335 notice in *Howard* was technically defective was deemed to render the ensuing sale not void, but voidable. In weighing the equities and upholding the validity of the sale, the court found three circumstances dispositive: (1) the taxpayers received actual written notice of the impending tax sale; (2) the taxpayers understood the significance of the notice and had the opportunity to be present at the sale; and (3) the taxpayers waited until after the redemption period had passed and the tax deed was executed before challenging the validity of the sale. *D.* at 508-09. Thus, because the purpose of the § 6335 notice requirements was satisfied and the taxpayers had delayed unreasonably in enforcing their procedural rights, the court concluded thay were not entitled to relief in equity. *See also VanSkiver v. United States*, 751 F.Supp. 1522, 1525-26 (D. Kan. 1990) (following *Howard*); *Melling v. Mattley*, 10 Neb.App. 745, 754-58, 637 N.W.2d 661, 668-71 (2002) (same).

The instant facts are materially indistinguishable from those in *Howard*. In fact, the instant facts present an even more compelling case for denial of equitable relief. Whereas the Howards waited until five months after the tax sale to enforce thrie procedural rights, plaintiff Grable waited, inexplicably, some six years after the sale before commencing this action. Plaintiff has thus not shown entitlement to the equitable relief it seeks.

The Michigan Court of Appeals decision in *Village of Dimondale v. Grable*, supra, appears to be at odds with this ruling.

A closer reading, however, suggests otherwise. In *Dimondale*, where Grable was the *defendant* in a quiet title action, the court refused to bar Grable's invocation of the notice defect as a defense. *Id.*, 240 Mich.App. at 570. The court implied that if Grable had been seeking equity as the plaintiff, as were the Howards in *Howard v. Adle*, then Grable would have "opened the door" to the defendant's claim that Grable acted inequitably by failing to timely challenge the sale. The court observed that equity is a shield, not a sword. *Id.* .

Here, consistent with this teaching of *Dimondale*, defendant Darue has properly invoked equity as a shield to protect the validity of title it received more than five years ago. Because plaintiff Grable received actual notice of the seizure and sale, was not prejudiced by the technical notice defect, and has not offered any explanation or justification for its lengthy delay in challenging the sale, equity denies plaintiff relief.[3]

IV

For the foregoing reasons, there being no genuine issue of material fact, the Court concludes that defendant Darue is entitled to judgment as matter of law on plaintiff's quiet title claim against it. The tax deed conveying plaintiff Grable's right, title and interest in the subject property to Darue is valid and effective.

This result renders Darue's third-party action against the United States moot. The third-party complaint will therefore be dismissed.

A judgment order consistent with this opinion shall issue forthwith.

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[3] The Court notes that, in each of the cases cited by the plaintiff in support of strict compliance of the § 6335 notice requirements, supra, at p.4, the equities more clearly favored the challenging taxpayer, who challenged the validity of the tax sale either prior to the sale or reasonably promptly thereafter.

Dated March 28, 2002

s/David W. McKeague
DAVID W. McKEAGUE
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 1:01-CV-37

GABLE & SONS METAL PRODUCTS, INC.,
A Michigan corporation,

Plaintiff,

v.

DARUE ENGINEERING & MANUFACTURING,
A Michigan corporation,

Defendant.

Before Hon. David W. McKeague.

JUDGMENT ORDER

In accordance with the Court's written Opinion of even date,

IT IS HEREBY ORDERED that the quiet title claim of plaintiff Grable & Sons Metal Products, Inc, for removal of a cloud upon its title to property commonly known as 601-701 W. Plains Road, in Eaton Rapids, Michigan, is **DENIED**, and **JUDGMENT** is **AWARDED** in favor of defendant Darue Engineering & Manufacturing, Inc. on plaintiff's quiet title claim; and

IT IS FURTHER ORDERED that the third-party complaint of defendant Darue Engineering & Manufacturing, Inc., against the United States of America is **DISMISSED as moot**.

Dated March 28, 2002

s/David W. McKeague
DAVID W. McKEAGUE
United States District Judge